

INTRADEPARTMENTAL CORRESPONDENCE

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**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** OFFICER INVOLVED SHOOTING FID NO. 017-19

Honorable Members:

The following is my review, analysis, and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 017-19. A Use of Force Review Board (UOFRB) was convened on this matter on January 27, 2020. I have adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

**Note:** The criminal investigation in this matter was handled by the Los Angeles Sheriff Department (LASD), Homicide Bureau. As a result, FID did not have access to the crime scene until it was completed and processed by the LASD. Additionally, FID was provided with redacted reports, redacted witness interviews, limited crime scene photographs, and edited security video clips.

**SUMMARY**<sup>1</sup>

On April 26, 2019, at approximately 1050 hours, Sergeant F. Starkey, Serial No. 25253, Personnel Group, Employee Assistance Unit (EAU), was off-duty, on a regularly scheduled day off. Sergeant Starkey drove his personal vehicle to Mike's Car Wash, located at 10135 South Vermont Avenue, in the County of Los Angeles.<sup>2</sup>

According to Sergeant Starkey, once the carwash employees took his vehicle to begin the car wash process, he walked to the southwest *entrance gate off of 102<sup>nd</sup> Street*, west of Vermont Avenue. Sergeant Starkey *continued watching* the employees from the gate while he made a phone call utilizing his cell phone. Sergeant Starkey observed a *male walking north across 102<sup>nd</sup> street from the north south alley*. Sergeant Starkey described the male, later determined to be the suspect, as a Hispanic with a gray hoodie pulled down over his face. Sergeant Starkey could

<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

<sup>2</sup> Mike's Car Wash consisted of an office located on the northeast portion of the property and a wash rack to the southeast portion. An open entrance gate was located along the south side of the property. Sergeant Starkey stated he frequented the car wash about two to three times a month.

only see *a little bit of his eyes and his nose*. The suspect walked *into the car wash right past Sergeant Starkey from about two or three feet away, straight to the office*, and went inside. Sergeant Starkey's vehicle was being driven *out of the wash rack and over to the east side of the car wash close to Vermont*. Sergeant Starkey walked over and sat on a chair *on the west side of the office door*.

**Note:** The FID investigation revealed Sergeant Starkey was already seated on a chair next to the car wash office door when the suspect entered the car wash and passed Sergeant Starkey.

According to Sergeant Starkey, while he was sitting in the chair, he began *thumbing through some messages* on his cell phone. After the suspect had been in the office for *about ten minutes*, Sergeant Starkey heard *three consecutive noises* coming from inside the office. Sergeant Starkey was unsure if the noises were the result of *bottles dropping inside the office* or if they were *gunshots*. Sergeant Starkey looked *over at the lady to his left*, another car wash customer later identified as Witness B. Zamora, who was sitting on the east side of the office. They each *exchanged glances at each other*, unsure of what they *had heard*. He additionally observed the *employees, who were all drying the cars, stop and look over in the office*. The suspect exited the office approximately *10 seconds* after Sergeant Starkey heard the three possible gunshots. The suspect passed by Sergeant Starkey, coming within *two to three feet* of him.

**Note:** The FID investigation revealed the suspect had been inside the office for approximately nine seconds.

According to Sergeant Starkey, he observed the suspect holding a *black semi-automatic weapon, in his right hand*, with the muzzle pointed *down* towards the ground. Sergeant Starkey observed that the suspect's *weapon* was *bigger than Sergeant Starkey's own off-duty pistol*. The suspect was *looking around* as he walked *in a southwest direction down the driveway* and was approximately *halfway to the gate* from where Sergeant Starkey was seated. Sergeant Starkey observed that the suspect was walking at a *quick pace*, but described it as *nothing that made Sergeant Starkey think he (the suspect) had just shot somebody*. Sergeant Starkey "put two and two together" and realized that *those sounds possibly could have been shots and a crime could have occurred*. Sergeant Starkey believed the suspect was a threat *to not just himself, but to everybody in the car wash*. Sergeant Starkey decided that if he was going to take action, he needed to let the suspect know that Sergeant Starkey was a police officer and wanted everybody in the car wash to know that Sergeant Starkey was not a suspect (**Debriefing Point No. 1-Utilization of Cover**).

According to Sergeant Starkey, he stood up from his chair and told the suspect to "stop" and identified himself as the *police*. In response to Sergeant Starkey's command, the suspect *turned sideways at an angle, in a counterclockwise direction*. The suspect brought *up* his firearm and fired *one round* in Sergeant Starkey's *direction*. Sergeant Starkey *just reacted* and didn't know if he unholstered his off-duty pistol prior to or after the suspect fired at him (**Drawing/Exhibiting and Additional/Equipment – Service Pistol Loading Standards**).<sup>3</sup>

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<sup>3</sup> Sergeant Starkey was in possession of his off-duty pistol identified as a Smith and Wesson .380 caliber pistol loaded with Department approved ammunition and secured in a Department approved off-duty holster

According to Sergeant Starkey, he was standing approximately *two or three feet south of the chair* when he unholstered his pistol from its holster, which was attached to the right side of his belt. Sergeant Starkey utilized a *two-handed* grip and brought it *straight up*. Sergeant Starkey aimed *at the suspect's body mass*. At that point, the suspect *was still in the car wash, north of the gate*. A *fraction of a second* passed from the time the suspect shot at Sergeant Starkey to the time Sergeant Starkey fired *one* round back at the suspect. Sergeant Starkey was *not sure* if his round hit the suspect. Sergeant Starkey stated his background during the OIS only consisted of a *car parked on the south side of the street* and the apartment *buildings* on the south side of Vermont Avenue (**Lethal Use of Force**).

**NOTE:** The FID investigation determined that Sergeant Starkey fired one round, in a southwesterly direction from an unknown distance.

Presented at the UOFRB by FID investigators was a review of the car wash surveillance video which revealed what appeared to be a shadow of Sergeant Starkey standing south of the chair in which he had been previously seated. Sergeant Starkey's shadow appeared to depict the utilization of a two-handed shooting stance, as he pointed his pistol in a southwesterly direction.

According to Sergeant Starkey, the suspect *took off running in a southwest direction toward the north south alley*. Sergeant Starkey *began to track* the suspect, while keeping a distance of approximately 40 to 50 yards. While tracking, Sergeant Starkey held his pistol at *a low ready*, with his finger on *the side of the rail*. After the suspect ran south into the alley, Sergeant Starkey stopped *right at the mouth of the alley on 102<sup>nd</sup> street* and obtained cover from *the building on the south side of 102<sup>nd</sup>* as he conducted a *quick peek down the south alley*.<sup>4</sup> After the quick peek, Sergeant Starkey observed the suspect *still running south in the alley*. The suspect *ran up to a gray four-door Toyota* and entered *the passenger side of the vehicle*. *Immediately after* the suspect *jumped in* the vehicle, the unknown driver *took off southbound down the alley* in the vehicle. Sergeant Starkey holstered his off-duty pistol *immediately after* seeing the suspect *jump in the car*.

According to Sergeant Starkey, after holstering his pistol he pulled *out his cell phone and dialed 911*. Sergeant Starkey walked back towards the southwest *gate* of the car wash, crossing *on 102<sup>nd</sup> Street*, while still on the phone with Communications Division (CD). Sergeant Starkey notified CD that he was an off-duty police officer and had been involved in a shooting. Sergeant Starkey provided the description of the suspect and requested that CD notify Southeast Patrol Division. Sergeant Starkey stated he asked CD *to have a Southeast supervisor respond*. CD asked Sergeant Starkey if *anybody* had been *shot*. Sergeant Starkey *heard* an unknown male voice in the car wash lot *say that someone had been shot*. Sergeant Starkey walked into the car wash office *to verify* for CD whether someone had been shot. Sergeant Starkey observed a man *laying [sic] in his employee's arms* as they tried to *keep him coherent*. The man *had blood all*

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<sup>4</sup> A *quick peek* is a technique in where an officer uses available cover and swiftly glances around the cover to assess the area, the actions of a suspect, or to determine if a suspect is in the location. The rapid execution of the technique minimizes the danger to the officer.

*over him and appeared to be a young guy, approximately twenty to twenty-five years of age.* Sergeant Starkey advised CD that a rescue ambulance was needed.

**Note:** According to the FID investigation, Sergeant Starkey requested for a Southeast Patrol Division unit to respond to his location and directed CD to additionally notify the LASD of the incident. However, he did not request a Southeast Patrol Division supervisor during his call to CD.

According to Sergeant Starkey, a LASD patrol unit responded *immediately* after he called CD. Sergeant Starkey notified a LASD deputy at scene that Sergeant Starkey *was a police officer* and provided his *name and serial number*. Sergeant Starkey also provided *the suspect's description, height weight, direction of travel, and the shots that were fired*.

According to the FID investigation, Police Officers T. Hagen, Serial No. 43092, and J. Serna, Serial No. 43190, Southeast Patrol Division, were the first Los Angeles Police Department (LAPD) officers to arrive. Sergeant Starkey met with Officer Hagen and advised him that Sergeant Starkey had been involved in an OIS incident. Sergeant Starkey additionally provided the description of the suspect, the suspect's weapon, and the suspect vehicle, as well as the last direction of travel by the suspect. Sergeant Starkey also advised Officer Hagen of the number of shots Sergeant Starkey had heard inside of the car wash office (**Additional/Equipment - Body Worn Video Activation**).

**Note:** The statement by Sergeant Starkey to Officer Hagen took place prior to the arrival an LAPD supervisor and prior to being separated and admonished to not talk about the incident.

According to the FID investigation, Sergeant C. Coco, Serial No. 40088, Southeast Patrol Division, arrived at scene and was directed to Sergeant Starkey who had been identified as the involved officer of the OIS. Sergeant Coco took Sergeant Starkey's Public Safety Statement (PSS), admonished him to not discuss the incident, and separated and monitored Sergeant Starkey (**Protocols Subsequent to a Categorical Use of Force Incident and Additional/Equipment - Body Worn Video Activation**).

According to Sergeant Coco, he completed the notification of the OIS incident to Sergeant E. Gabaldon, Serial No. 35126, Watch Commander, Southeast Patrol Division. Sergeant Gabaldon then made notifications to the Department Operations Center (DOC) (**Protocols Subsequent to a Categorical Use of Force Incident and Additional/Equipment - Body Worn Video Activation**).

According to Sergeant Coco, he transported Sergeant Starkey to LAPD Southeast Community Police Station where Sergeant Starkey was subsequently interviewed by investigators from the LASD Homicide Bureau and LAPD FID.

According to the FID investigation, two fired .380 caliber cartridge casings, one fired bullet, and bullet fragments were recovered at the location. One cartridge casing and bullet fragment were determined to be attributed to Sergeant Starkey's pistol by an analysis conducted by the LASD.

The additional ballistic evidence recovered from the scene were determined to have been fired from a different .380 caliber pistol. At the time of this report, neither the suspect who fired the pistol at Sergeant Starkey, nor the suspect who drove the vehicle from the location, have been identified to FID investigators.

The FID investigators presented information at the UOFRB that there was no biological evidence recovered at the scene indicating the suspect was struck by Sergeant Starkey's discharging of his service pistol.

## **FINDINGS**

**Tactics – Tactical Debrief, Sergeant Starkey.**

**Drawing/Exhibiting – In Policy, No Further Action, Sergeant Starkey.**

**Lethal Use of Force – In Policy, No Further Action, Sergeant Starkey.**

## **ANALYSIS<sup>5</sup>**

### **Detention**

Sergeant Starkey was off-duty on a regularly scheduled day off. While waiting for his vehicle wash to be completed, he was seated next to the car wash office door. He heard three consecutive noises that he subsequently believed to be possible gun shots. After the three possible gunshots, a male holding a black semi-automatic pistol exited the office. The suspect's face was concealed by the hood of his sweatshirt. Based on his experience, Sergeant Starkey determined a crime may have occurred. Believing the suspect was a threat to himself and to the other people in the carwash, Sergeant Starkey decided to identify himself as a police officer and potentially take some type of law enforcement action. Without blocking the path or physically confronting the suspect, Sergeant Starkey ordered the suspect to stop as Sergeant Starkey identified himself as a police officer. The suspect turned towards Sergeant Starkey and fired one round in Sergeant Starkey's direction, resulting in an OIS. The suspect fled on foot and entered a waiting vehicle. Sergeant Starkey's actions were appropriate and within Department policies and procedures.

## **TACTICS**

Department policy relative to a Tactical Debrief is: "*The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance.*"

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<sup>5</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

#### Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- ***Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)***

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Sergeant Starkey estimated that the time from when he heard the possible gunshots in the office to when the suspect exited the office was approximately ten seconds. The rapid escalation of the situation by the suspect limited Sergeant Starkey's ability to plan for this incident. However, in regard to planning ahead for a possible off-duty incident, Sergeant Starkey stated he had practiced unholstering his off-duty pistol from his off-duty holster. Sergeant Starkey kept his off-duty pistol loaded with Department approved ammunition and inside of a Department approved holster.

The UOFRB noted that the suspect, after entering into the office of the car wash and presumptively firing his pistol at the victim inside, exited the office carrying the pistol in plain view in his hand. The suspect did not appear to have attempted to conceal the pistol even though numerous citizens and employees were present in the parking lot area of the car wash, keeping the firearm readily accessible.

**Assessment** – Sergeant Starkey observed the suspect arrive at the car wash with the hood of his sweatshirt pulled down, concealing his face. While the suspect was in the car wash office, Sergeant Starkey heard three possible gunshots. As the suspect fled the office, Sergeant Starkey observed the suspect holding an unconcealed pistol in his right hand and looking around. Sergeant Starkey assessed the suspect had committed a crime and that he was a threat to Sergeant Starkey and to the people at the carwash, leading Sergeant Starkey to take action and identify himself as a police officer. Sergeant Starkey assessed the background of the suspect during the

OIS, taking into consideration that there was an empty parked vehicle and an apartment complex in the background. During the OIS, Sergeant Starkey assessed after his first round of fire and observed the suspect flee on foot, but remained prepared and tracked the suspect's path.

**Time** – Sergeant Starkey was presented with a rapidly evolving incident in which the suspect's actions did not allow Sergeant Starkey time to communicate with the suspect, refine a tactical plan, or call for additional resources prior to the OIS incident. Sergeant Starkey instructed the suspect to stop and identified himself as a police officer. While it would have been preferable that Sergeant Starkey take a position of cover prior to identifying himself as a police officer, the danger presented to Sergeant Starkey and the citizens in the area by the armed suspect limited the time afforded to Sergeant Starkey.

**Redeployment and/or Containment** – The incident rapidly unfolded and provided limited time for Sergeant Starkey to redeploy. It would have been preferable Sergeant Starkey take a position of cover prior to identifying himself as a police officer. Sergeant Starkey attempted to contain the suspect as he tracked the suspect's movement to the waiting suspect vehicle.

**Other Resources** – Sergeant Starkey immediately contacted CD and requested an LAPD Southeast Patrol Division unit to respond and for LASD to be notified, due to the incident occurring in the jurisdiction of LASD. He additionally requested a rescue ambulance for the victim of the shooting.

**Lines of Communication** – Sergeant Starkey told the suspect to stop and identified himself as a police officer. Sergeant Starkey believed he needed to let the suspect and the other people at the car wash know that he was a police officer and not another suspect. The suspect responded by firing a pistol at Sergeant Starkey and running from the location. The suspect ran into an awaiting vehicle and fled from the location. The actions of the suspect did not allow for Sergeant Starkey to communicate further with the suspect. After the OIS incident, Sergeant Starkey communicated pertinent information to CD, as well as with LAPD and LASD personnel.

The UOFRB noted Sergeant Starkey was presented with a situation that required him to make a split-second decision to take police action. Sergeant Starkey was alone, and off-duty at the time of the incident which limited his tactical options. The UOFRB considered the disadvantages inherent with being off-duty, consisting of, but not limited to, not being equipped with a ballistic vest nor did he have the desired equipment for a tactical situation such as a radio to request assistance. Sergeant Starkey assessed that an armed suspect had committed a crime and was a threat to himself and to others at the car wash. Sergeant Starkey attempted to de-escalate the situation by issuing a verbal command for the suspect stop and gain the suspect's voluntary compliance. Sergeant Starkey did not attempt to physically confront the suspect, nor did he attempt to block the suspect's path. The UOFRB discussed the statement by a car wash employee, in which the employee believed that if it were not for Sergeant Starkey's actions, they all would have been shot. Sergeant Starkey's use of planning, assessment, time, redeployment, and lines of communication were within Department standards and expectations. The UOFRB examined Sergeant Starkey's actions during this rapidly unfolding situation and his attempt to have the suspect submit to a lawful detention.

The UOFRB determined, and I concur, that Sergeant Starkey attempted to de-escalate the incident, but the suspect's aggressive actions, including firing a pistol at Sergeant Starkey limited Sergeant Starkey's options. Sergeant Starkey attempted to utilize different aspects of de-escalation techniques throughout the incident.

During the review of the incident, the following Debriefing Topics were noted:

**Debriefing Point No. 1      Utilization of Cover**

*"Cover" is a term often associated with combat tactics. Under such conditions, cover refers to anything that may stop or deflect an opponent's weapon (e.g., brick walls, buildings, portion of the vehicle with the engine block, etc.) (California Commission on Peace Officers Standards and Training, Learning Domain 21).*

*There is an equation that saves lives: Distance + Cover = Time. Time gives officers options. Time is an essential element of de-escalation as it allows officers the opportunity to communicate with the suspect, refine tactical plans, and, if necessary, call for additional resources. Entering the suspect's space prematurely may force the suspect to act, ultimately escalating the situation. Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate, or any similar object that prevents the assailant from reaching the officer (Los Angeles Police Department Training Bulletin, Weapons Other Than Firearms, Volume XLVI, Issue 3, October 2017).*

The utilization of cover, coupled with distance, enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of actions taken during a tactical incident can be enhanced while also increasing an officer's tactical options. The investigation revealed that at the time Sergeant Starkey identified himself as a police officer, he did so without the benefit of cover.

Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work to ensure a successful resolution. The ability to adjust to a tactical situation ensures minimal exposure to the officers.

In this case, the UOFRB recognized that the incident rapidly unfolded in front of Sergeant Starkey who did not have cover immediately available. The area between Sergeant Starkey and the suspect was the open space of the car wash lot. Cover was available from some parked vehicles, but those vehicles were parked away from Sergeant Starkey and were not readily available. To seek cover, Sergeant Starkey would have had to use more time and delay intervening with the suspect who was walking with a firearm in plain sight amongst numerous car wash employees and other citizens. Although not specifically known at the time to Sergeant Starkey when he intervened with the suspect, the suspect had murdered a carwash employee prior to walking past Sergeant Starkey. Sergeant Starkey opined that a significant crime had occurred due to the suspect's actions and the sounds that Sergeant Starkey heard that were possible gunshots emanating from the office prior to the suspect exiting. The UOFRB would

have preferred Sergeant Starkey have a position of cover prior to announcing his presence and ordering the suspect to stop, but considered that Sergeant Starkey's tactical options were significantly limited due to the immediacy of the possible threat of violence to numerous citizens and the limited available cover. The UOFRB recommended additional training on the topic of utilizing cover during the Tactical Debrief.

Based upon the totality of the circumstances, the UOFRB determined, and I concur, that Sergeant Starkey's actions did not substantially deviate from department standards. I will direct that as a topic of discussion during the Tactical Debrief.

### **Command and Control**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide)*

Sergeant Coco responded to the incident and, as the first supervisor at scene, assumed the role of Incident Commander. Sergeant Coco was directed to Sergeant Starkey by LAPD officers who were already at scene. Sergeant Coco obtained a PSS from Sergeant Starkey and admonished

him to not discuss the incident. After obtaining the PSS, Sergeant Coco walked away from Sergeant Starkey leaving him unmonitored in the car wash parking lot. Sergeant Coco later separated Sergeant Starkey, having Sergeant Starkey remain in the front passenger seat of Sergeant Coco's police vehicle. Sergeant Coco then left Sergeant Starkey unmonitored as Sergeant Coco communicated with a concerned citizen near the perimeter. On another occasion, while Sergeant Coco was responsible for monitoring Sergeant Starkey, Sergeant Coco temporarily left Sergeant Starkey unmonitored to update personnel who were responding to the incident. During that time, several citizens approached Sergeant Starkey and engaged him in conversation.

Sergeant Coco additionally coordinated with LASD personnel and assisted them in the homicide investigation. He directed LAPD officers to assist with establishing a crime scene, preserving evidence, and with identifying witnesses. Sergeant Coco gave direction to establish an LAPD command post and made notifications of the incident to Sergeant Gabaldon who was the Southeast Patrol Division Watch Commander.

The UOFRB noted that although Sergeant Coco was attempting to conduct multiple tasks at the incident, his primary responsibility was post-OIS procedures related to Sergeant Starkey. Sergeant Coco was not responsible for the homicide investigation and subsequent crime scene as the incident occurred in the jurisdiction of the LASD. By placing Sergeant Starkey into Sergeant Coco's police vehicle, Sergeant Coco was provided with a contained environment in which to keep Sergeant Starkey separated and monitored. Sergeant Coco had the opportunity to complete his responsibilities as a field supervisor responsible for post-OIS procedures. The UOFRB would have preferred Sergeant Coco focus on the needs of the individual involved in the OIS, as opposed to other additional interests which were the responsibility of the LASD. Sergeant Coco continued to allow distractions to result in lapses of his monitoring and separation duties of Sergeant Starkey.

The actions of Sergeant Coco were not consistent with Department supervisor training and therefore did not meet my expectations of a field supervisor during a critical incident.

Sergeant Gabaldon became aware of the OIS and, thirty-nine minutes later, notified the DOC. The total time elapsed from the OIS to Sergeant Gabaldon's DOC notification was approximately one hour. In addition, Sergeant Gabaldon's Watch Commander's Daily Report did not document the OIS incident under the *Categorical UOF* section in the *Major Incident Task List* section of the report. The incident was documented under the narrative portion of the Watch Commander's Daily Report; however, the narrative did not include information of the time and location where Sergeant Starkey was separated and monitored.

The UOFRB evaluated Sergeant Gabaldon's actions throughout this incident and noted that while she demonstrated overall leadership completing important and required tasks, the UOFRB would have preferred Sergeant Gabaldon make timely notifications and complete the Watch Commander's Log in an accurate manner.

In totality, Sergeant Gabaldon's actions during this critical incident were consistent with Department supervisory training and met my expectation of a watch commander during a critical incident.

### Tactical Debrief

Each tactical incident also merits a comprehensive de-briefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to review the officer's individual actions that took place during this incident.

Therefore, I would have directed that Sergeant Starkey attend the Tactical Debrief and that the specific identified topics are discussed in addition to cover/concealment, foot pursuit concepts, and loading standards.<sup>6</sup>

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### General Training Update (GTU)

On May 22, 2019, Sergeant Starkey attended a GTU. All mandatory topics were covered.

### Drawing/Exhibiting

*Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified" (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).*

According to Sergeant Starkey, he observed the suspect holding a black semiautomatic weapon in his right hand with the muzzle pointed down towards the ground. Sergeant Starkey observed that the suspect's weapon was bigger than his own. The suspect was looking around as he walked in a southwest direction down the driveway and was approximately halfway to the gate from where Sergeant Starkey was seated. Sergeant Starkey observed the suspect walking at a

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<sup>6</sup> Sergeant Starkey retired from his employment with the Los Angeles Police Department shortly after this incident. His retirement date had been pre-scheduled and was not related to this incident.

quick pace, but nothing that made Sergeant Starkey think that the suspect had just shot somebody. Sergeant Starkey assessed the situation and determined that those sounds possibly could have been gunshots and a crime could have occurred. Sergeant Starkey believed the suspect was a threat to not just himself, but to everyone in the car wash. Sergeant Starkey instructed the suspect to stop and Sergeant Starkey identified himself as the police. The suspect turned in a counterclockwise manner and fired a round in Sergeant Starkey's direction. Sergeant Starkey "just reacted" and did not know if he unholstered his pistol prior to the suspect shooting in his direction or if he unholstered afterwards.

Sergeant Starkey recalled,

*It was like are those gunshots or --...Just sat there for a minute, waiting trying to figure out what was going on.<sup>7</sup>*

*And then the guy in the gray hoodie walks out of the office past me and when he comes out as he's walking past me I see in his right hand a black semiautomatic weapon...I put two and two together and I say, "Stop. Police."<sup>8</sup>*

*Facing Down... He continued walking just kind of looking around.<sup>9</sup>*

*I knew it was bigger than mine.<sup>10</sup>*

*I realized that those sounds possibly could have been shots possibly a crime could have occurred...Not just me but to everybody in the car wash.<sup>11</sup>*

*I just reacted. I don't know.<sup>12</sup>*

In this case, the UOFRB conducted a review in evaluating the reasonableness of Sergeant Starkey's Drawing and Exhibiting. The UOFRB noted Sergeant Starkey told the suspect to stop and identified himself as a police officer. In response to Sergeant Starkey's command, the suspect turned sideways at an angle, in a counterclockwise direction. The suspect brought up his firearm and fired one round in Sergeant Starkey's direction. Sergeant Starkey reacted, but did not know if he unholstered his off-duty pistol prior to or after the suspect fired at him. The UOFRB noted that in either case, the suspect was observed to have been holding a pistol or had already fired upon Sergeant Starkey.

As such, based on the totality of the circumstances, the UOFRB determined, and I concur that an officer with similar training and experience as Sergeant Starkey, would reasonably believe that

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<sup>7</sup> Sergeant Starkey LAPD Transcript, Page 19, Lines 8-9, 14-15

<sup>8</sup> Sergeant Starkey LAPD Transcript, Page 8, Lines 3-6, 8-10

<sup>9</sup> Sergeant Starkey LAPD Transcript, Page 22, Line 12, Lines 18-19

<sup>10</sup> Sergeant Starkey LAPD Transcript, Page 39, Line 7

<sup>11</sup> Sergeant Starkey LAPD Transcript, Page 55, Lines 8-9, Lines 11-13

<sup>12</sup> Sergeant Starkey LAPD Transcript, Page 23, Line 15

there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, I find Sergeant Starkey's Drawing/Exhibiting to be In-Policy, No Further Action.

### **Use of Force – General**

*It is the policy of this Department that personnel may use only that force which is “objectively reasonable” to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance*

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

### **Lethal Use of Force**

*Law enforcement officers are authorized to use deadly force to:*

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Sergeant Starkey- .380 caliber, one round in a southwesterly direction from an unknown distance.

Sergeant Starkey was standing approximately two or three feet south of the chair when he unholstered his pistol from its holster, which was attached to the right side of his belt. Sergeant Starkey utilized a two-handed grip and aimed at the suspect's body mass. At that point, the suspect was still in the car wash, north of the gate. A fraction of a second passed from the time the suspect shot at Sergeant Starkey to the time Sergeant Starkey fired one round back at the suspect. Sergeant Starkey stated his background during the OIS only consisted of a car parked on the south side of the street and the apartment buildings along on the south side of Vermont Avenue.

Sergeant Starkey recalled,

*I realize what had happened. I put two and two together and I say, "Stop. Police." And the other workers are coming up and they're over by the wash rack. And he turns kind of sideways at an angle and he fires a round in my direction and that's when I fire a round back.<sup>13</sup>*

*He was in front of me about almost at the gate... He wasn't past the gate. He was still in the car wash.<sup>14</sup>*

*He was turning around and had fired a round at me. Well, in my direction.<sup>15</sup>*

*He fired at me first... I just remember him coming up and seeing the gun come up.<sup>16</sup>*

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<sup>13</sup>Sergeant Starkey LAPD Transcript, Page 8, Lines 8-12

<sup>14</sup>Sergeant Starkey LAPD Transcript, Page 46, Lines 2-3, Lines 14-15

<sup>15</sup>Sergeant Starkey LAPD Transcript, Page 55, Lines 21-22

<sup>16</sup>Sergeant Starkey LAPD Transcript, Page 23, Line 19 and Page 24, Lines 13-14

*I was closer to the chair but I wasn't at the chair. I'll say I was maybe two or three feet south of the chair.<sup>17</sup>*

*When I came up to fire a two-hand grip... I came straight up to target...At -- at the suspect body mass.<sup>18</sup>*

*And I also wanted everybody in the parking lot -- not the parking lot, the car wash to know that I was a police officer and not a suspect myself.<sup>19</sup>*

According to Sergeant Starkey, when asked by FID investigators of how much time elapsed between when the suspect fired at him and when Sergeant Starkey returned fire, Sergeant Starkey recalled, "Probably a fraction of a second."<sup>20</sup>

In this case, the UOFRB conducted a thorough review of the investigation and considered several factors in evaluating the reasonableness of Sergeant Starkey's use of lethal force. The UOFRB noted that this was a dynamic and rapidly unfolding incident in which Sergeant Starkey was forced to make a split-second decision to protect himself and other citizens at the car wash from the deadly threat. The suspect was walking through the car wash, armed with a pistol in his hand. Upon being verbally contacted by Sergeant Starkey, the suspect turned and fired his pistol at Sergeant Starkey, thus posing a deadly threat.

As such, based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Sergeant Starkey would reasonably believe that the suspect's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable. Therefore, I find Sergeant Starkey's Use of Lethal Force to be In Policy, No Further Action.

#### **Additional/Equipment**

**Personnel Status** – Sergeant Starkey retired from the Los Angeles Police Department shortly after the incident. His retirement date had been pre-scheduled and was not related to this incident.

**Service Pistol Loading Standards-** The investigation revealed that Sergeant Starkey was in possession of an additional magazine in his back pocket. The magazine was loaded with a total of five rounds, but had a capacity of six rounds. This issue was brought to the attention of Captain A. McCraney, Serial No. 30183, Commanding Officer, Recruitment and Employment Division. Captain McCraney recommended additional training on Department Loading Standards during the Tactical Debrief, if Sergeant Starkey had not retired.

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<sup>17</sup> Sergeant Starkey LAPD Transcript, Page 43, Lines 23-25

<sup>18</sup> Sergeant Starkey LAPD Transcript, Page 25, Lines 10-11, Line 19, and Line 22

<sup>19</sup> Sergeant Starkey LAPD Transcript, Page 55, Lines 2-4

<sup>20</sup> Sergeant Starkey LAPD Transcript, Page 57, Line 8

**Department Operations Center Notifications-** The investigation revealed Sergeant Gabaldon became aware of the OIS and, approximately 39 minutes later, made notification to the DOC. The total time from the OIS occurring to the DOC notification was approximately one hour. This issue was brought to the attention of Captain Paglialonga. Captain Paglialonga addressed these issues by divisional training and the generation of a Supervisory Action Item (SAI). The Commanding Officer of Operations - South Bureau (OSB) and the Director of the Office of Operations (OO) concurred with this action. As such, I deem no further action is necessary.

**Protocols Subsequent to a Categorical Use of Force Incident –** The investigation revealed Sergeant Gabaldon's Watch Commander's Daily Report did not document the OIS incident under the Categorical UOF section in the Major Incident Task List of the report. The OIS incident was documented under the narrative portion of the Watch Commander's Daily Report; however, the narrative did not include the time and location where Sergeant Starkey was separated and monitored. These issues were brought to the attention of Captain Paglialonga who addressed these issues by divisional training and the generation of a SAI. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

Sergeant Coco obtained a PSS from Sergeant Starkey and admonished him to not discuss the incident. Sergeant Coco monitored Sergeant Starkey throughout the incident, however, there were times Sergeant Starkey was left unmonitored. After the PSS, Sergeant Coco left Sergeant Starkey unmonitored by his police vehicle, as he handled a citizen issue near the perimeter. On another occasion, Sergeant Coco temporarily left Sergeant Starkey unmonitored to update responding LAPD personnel. During that time, citizens approached Sergeant Starkey and engaged him in conversation. The noted issues were brought to the attention of Captain Paglialonga. Captain Paglialonga addressed the issues with Sergeant Coco through a comment card. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

In addition, Sergeant Coco's Sergeant's Daily Report did not document the time or location of his monitoring and separation of Sergeant Starkey. The noted issue was brought to the attention of Captain Paglialonga. Captain Paglialonga addressed the issue with Sergeant Coco through divisional training, which was documented in the Learning Management System (LMS), and the generation of a SAI. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

**Body Worn Video (BWV) Activation –** The investigation revealed that Sergeant Coco activated his BWV approximately ten seconds after his arrival at scene. Sergeant Coco stated he believed he had activated his BWV device upon arrival to the incident. Sergeant Coco deactivated his BWV prior to taking the PSS from Sergeant Starkey. Approximately forty minutes later, Sergeant Coco powered off his BWV while at scene, during his monitoring of Sergeant Starkey. Approximately twenty-three seconds later, Sergeant Coco powered his BWV back on and activated his BWV prior to making contact with a citizen. Captain Paglialonga determined Sergeant Coco did not have a previous history of late activations or short buffers related to BWV. The noted issues were brought to the attention of Captain Paglialonga. Captain

Paglialonga addressed the issues with Sergeant Coco through a comment card and divisional training. The corrective actions were documented in LMS and through the generation of a SAI. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

Officer Hagan had his BWV device powered on throughout the incident, but had a late activation of approximately twenty minutes after his arrival. The issue was brought to the attention of Captain Paglialonga. Captain Paglialonga determined Officer Hagan did not have a previous history of late activations or short buffers related to BWV. Captain Paglialonga addressed the issues with divisional training which was documented in LMS and in the generation of a SAI. The Commanding Officer of OSB and the Director of the OO concurred with this action. As such, I deem no further action is necessary.

### **Audio/Video Recordings**

**Digital In-Car Video System (DICVS)** – Southeast Patrol Division vehicles were equipped with DICVS at the time of the incident. The DICVSs recordings resulted in three videos, all of which were post-OIS and were not of evidentiary value.

**Body Worn Video (BWV)** – Sergeant Starkey was not equipped with BWV due to his off-duty status. Southeast Patrol Division officers responding to the incident were equipped with BWV, which they all activated during the incident. All videos were post-OIS. The BWV of Officer Serna captured Sergeant Starkey giving a thorough description of the suspect and the suspect's direction of travel. Sergeant Starkey was also captured stating that he heard three gunshots and had fired one round at the suspect.

**Outside Video Surveillance** – LASD investigators recovered surveillance footage from the location. Two pieces of that footage were later provided to LAPD FID investigators. The OIS was not captured on any of the footage.

Respectfully,

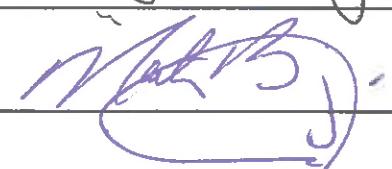
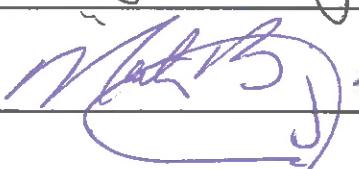
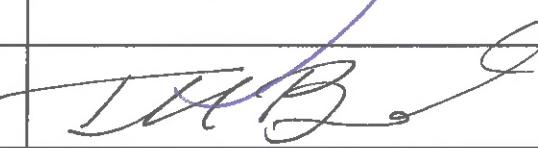
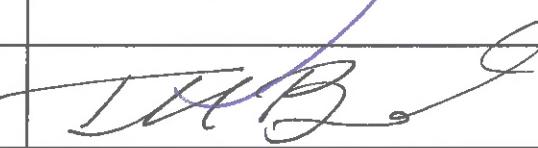
  
MICHEL R. MOORE  
Chief of Police

Date: 2-24-20

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No.	CF No.	DR No.
017-19		
SHOOTING		

REVIEW BOARD INFORMATION

Location of Incident 10135 South Vermont Avenue	RD 9999	Date of Incident April 26, 2019	Date and Time of Board Review January 27, 2020 1230 Hours
Chair Assistant Chief B. Girmala, Serial No. 24916	Signature of Approving Board Members: 		
Member (Office Representative) Commander J. Bert, Serial No. 33112			
Member (Police Sciences and Training Bureau) Deputy Chief M. Baeza, Serial No. 26624			
Member (Bureau) Commander D. Randolph, Serial No. 27634			
Member (Peer) Sergeant T. Bogart, Serial No. 33096			
Presenting Commanding Officer Captain A. McCraney, Serial No. 30183			

Notes:

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Additional Considerations:

Modification to Present Policy, Practices or Training:

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POLICE COMMISSION

COP Date Signed: 2/24/20  
 PC Date Submitted: 2/24/20

Employee (Last Name, First, Middle) Starkey, Fred		Serial No. 25253	Rank/Class Sergeant I	Incident No. 017-19
Length of Employment 32 years, 3 months	Current Division Retired	Time in Current Division 0 years, 7 months		
Use of Force Review Board		Chief of Police		Police Commission
<b>Tactics</b>	<b>Tactics</b>		<b>Tactics</b>	
<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval	<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval		<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval	
<b>Drawing and Exhibiting the Firearm</b>	<b>Drawing and Exhibiting the Firearm</b>		<b>Drawing and Exhibiting the Firearm</b>	
<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	
<b>Lethal Use of Force</b>	<b>Lethal Use of Force</b>		<b>Lethal Use of Force</b>	
<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	
<b>Less-Lethal Use of Force</b>	<b>Less-Lethal Use of Force</b>		<b>Less-Lethal Use of Force</b>	
<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	
<b>Non-Lethal Use of Force</b>	<b>Non-Lethal Use of Force</b>		<b>Non-Lethal Use of Force</b>	
<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	
<b>Unintentional Discharge</b>	<b>Unintentional Discharge</b>		<b>Unintentional Discharge</b>	
<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	
<b>Other Issues</b>	<b>Other Issues</b>		<b>Other Issues</b>	
<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	

Notes:

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(J) 34962

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<b>Final Adjudication for Out of Policy/Administrative Disapproval Finding</b>
<input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint  <input type="checkbox"/> Employee's Work History Reviewed

Notes:

\*A Tactical Debrief shall be conducted for all Categorical Use of Force Incidents.